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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,764	03/11/2004	John Scott Minor JR.		6441

7590
John Scott Minor, Jr.
1599 Maywood Road
Cleveland, OH 44121

11/14/2007

EXAMINER

MCLEOD, MARSHALL M

ART UNIT	PAPER NUMBER
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4152

MAIL DATE	DELIVERY MODE
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11/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/798,764

Applicant(s)

MINOR, JOHN SCOTT

Examiner

Marshall McLeod

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-17 are pending in this application.

Claim Objections

2. The following claims are objected to for a lack of antecedent basis:

“said data”, claim 12 (page 7, line 5); claim 13 (page 7, line 6); claim 14 (page 7, line 6);
claim 15 (page 7, line 7); claim 16 (page 7, line 6); claim 17 (page 7, line 7).

“associated software”, claim 12 (page 7, line 9).

“communications wave signal”, claim 12 (page 7, lines 9-10); claim 13 (page 7, lines 7-8); claim 14 (page 7, line 7); claim 15 (page 7, line 8); claim 16 (page 7, line 7); claim 17 (page 7, line 8).

“the marker”, claim 2 (page 6, line 3).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. With respect to claim 1, the claim lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

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Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” Both types of “descriptive material” are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759.

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, an Internet-enabled, auto-networking, wireless, sensor-capable, specific geographic location marker based communications network system for mobile or stationary device(s) or vehicle(s) through wired or wireless means, does not make it statutory.

5. With respect to claims 12-17, the claims are rejected under 35 USC 101, because the claims improperly claim a method as well as the system of claim 1 from which they depend. Claiming both a method and a system in a single claim is not permitted under 35 USC 101.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1 rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. Note the format of the claims in the patent(s) cited.

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8. With respect to claims 12-17, the claims are rejected under the second paragraph of 35 U.S.C. 112. Because the claims do not particularly point out and distinctly claim the subject matter of a method as stated in the claims. The claims instead claim the system of claim 1 from which they depend as well as a method.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

10. **Claims 1, 3-9, 11-12, 14-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by French et al. (Patent No US 7114388 B1), hereinafter French.**

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11. With respect to claim 1, French discloses an Internet-enabled, auto-networking, wireless, sensor-capable, specific geographic location marker based communications network system for mobile or stationary device(s) or vehicle(s) through wired or wireless means (Column 3, lines 34-35, Column 5, lines 24-34; Column 6, lines 62-67).

12. With respect to claim 3, French discloses one of the following wireless communications network units; end node, router node, or gateway node (Column 14, lines 44-50, teaches how the nodes direct the signal to another node, i.e. router node).

13. With respect to claim 4, French discloses end node hardware acting as the end wireless communications network location for sending data to or receiving data from any field electronics (Column 16, lines 17-25).

14. With respect to claim 5, French discloses router node hardware that extend the data transmission distance or range of said communications network system (Column 14, lines 1-11).

15. With respect to claim 6, French discloses gateway node hardware that provide the connection to the Internet for data reception, transmission, compilation and analysis of said communications network system (Column 5, lines 51-54; Column 16, lines 37-65, teaches how the base unit attaches to several networks and routes data from one to the other, i.e. a gateway).

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16. With respect to claim 7, French discloses all associated software to perform the networking, communications (Column 5, lines 38-50), data storage (Column 7, lines 51-58), security and analysis of end node hardware, router node hardware, and gateway node hardware of said communications network system (Column 5, lines 38-50).

17. With respect to claim 8, French discloses a geographic positioning (GPS) hardware system and associate software to bring its/their data to the wireless communications end node, router node or gateway node with or without security control of said communications network system (Column 6, lines 33-36).

18. With respect to claim 9, French discloses sensor(s) hardware and associated software to bring its/their data to the wireless communications end node, router node or gateway node with or without security control of said communications network system (Column 3, lines 12-13).

19. With respect to claim 11, French discloses an internal and/or external power unit and associated software to bring its/their power to the on-board electronics and wireless communications end node, router node or gateway node with or without security control for said communications network system that is a battery and/or a solar cell based energy system for marker power (Column 6, lines 24- 30; lines 47-50; Column 9 lines 6-12).

20. With respect to claim 12, French discloses a method of obtaining information about a location of land including but not limited to the steps of: transmitting said data from the wireless

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communications end node to or from a wireless communications router node to or from a wireless communications gateway node to or from the internet with all associated software; processing the communications wave signal to obtain the information about the location; and converting the information with computer software into a program language (Column 4, lines 4-14).

21. With respect to claim 14, French discloses a method of obtaining information about route and environmental data for real time autonomous systems control including but not limited to the steps of: transmitting or receiving said data from the wireless communications end node to or from a wireless communications router node to or from a wireless communications gateway node to or from the Internet; processing the communications wave signal to obtain the information about the data; and converting the information with computer software into a program language (Column 2, lines 15-20; Column 1, lines 62-67).

22. With respect to claim 15, French discloses a method of obtaining information about plat data as the basis for tax assessment within the county auditor system of each state including but not limited to the steps of: transmitting or receiving said data from the wireless communications end node to or from a wireless communications router node to or from a wireless communications gateway node to or from the Internet; processing the communications wave signal to obtain the information about the data; and converting the information with computer software into a program language (Abstract).

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23. With respect to claim 17, French discloses a method of obtaining information about environmental, industrial, commercial, residential, medical and security sensor based data in real time including but not limited to the steps of: transmitting or receiving said data from the wireless communications end node to or from a wireless communications router node to or from a wireless communications gateway node to or from the Internet; processing the communications wave signal to obtain the information about the data; and converting the information with computer software into a program language (Column 1, lines 33-67; Column 2, lines 1-9).

Claim Rejections - 35 USC § 103

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over French as applied to claim 1 above.

26. With respect to claim 2, French does not disclose the marker made of a material selected from the group consisting of concrete, metal and plastic. However, it would have been obvious to a person having ordinary skill in the art at the time of the invention that the marker of French is made up of metal, plastic and other materials, as are most manufactured items that have electrical components. It is also to be noted that constructing the marker out of concrete is a design/manufacturing option that can be implemented by a person of ordinary skill in the art.

27. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over French, as applied to claim 1 above in view of Paratore et al. (Patent No US 6294997 B1), hereinafter Paratore.

28. With respect to claim 10, French does not disclose a radio frequency identification tag (RFID) hardware and associated software. However, Paratore discloses a radio frequency identification tag (RFID) hardware and associated software, (Column 1, lines 58-67). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the sensors of French with the teachings of Paratore to include a radio frequency identification tag (RFID). Because as stated in Paratore the RFID can be used to help detect environmental conditions, which is the main purpose of French's sensor. The inclusion of RFID would be obvious as another way to help sense and collect environmental conditions.

29. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over French, as applied to claim 1 above in view of Schalkhammer et al. (Patent No US 6669906 B1), hereinafter Schalkhammer.

30. With respect to claim 13, French discloses including but not limited to the steps of" transmitting or receiving said data from the wireless communications end node to or from a wireless communications router node to or from a wireless communications gateway node to or from the Internet (Column 13, lines 50-60); processing the communications wave signal to

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obtain the information about the data; and converting the information with computer software into a program language (Column 7, lines 9-11). French does not disclose the Internet-enabled, auto-networking, wireless, sensor-capable, specific geographic location marker based communications network system of claim 1 to include a method of obtaining information about bioinformatics data from or to living organisms in real time. However, Schalkhammer discloses the Internet-enabled, auto-networking, wireless, sensor-capable, specific geographic location marker based communications network system of claim 1 to include a method of obtaining information about bioinformatics data from or to living organisms in real time (Column 1, lines 8-12). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the sensor in French with the teachings of Schalkhammer to include a bioinformatics sensor to help collect bioinformatics information, which can help with the overall goal of collecting environmental data.

31. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over French, as applied to claim 1 above in view of Lanckton et al. (Patent No US 5517419 A), hereinafter Lanckton.

32. With respect to claim 16, French discloses transmitting or receiving said data from the wireless communications end node to or from a wireless communications router node to or from a wireless communications gateway node to or from the Internet (Column 5, lines 24-34). French does not disclose a method of obtaining information about topographic and control point data for automating photogrammetry by processing the communications wave signal to obtain

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the information about the data and converting the information with computer software into a program language. However, Lanckton discloses a method of obtaining information about topographic and control point data for automating photogrammetry by processing the communications wave signal to obtain the information about the data and converting the information with computer software into a program language (Column 2, lines 54-64). It would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the sensor in French with the teachings of Lanckton to obtain information about topographic and control point data for automating photogrammetry by processing the communications wave signal to obtain the information about the data and converting the information with computer software into a program language. In order to collect more environmental information and make obtaining that information easier because of the conversion of the data, performed by the computer software.

Conclusion

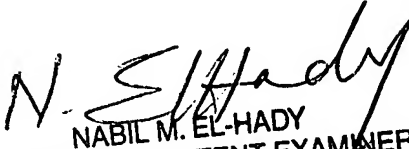
33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marshall McLeod whose telephone number is (571) 270-3808. The examiner can normally be reached on Monday - Friday 7:30 a.m-5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nabil El-Hady can be reached on (571) 272-3963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.M. 11/7/2007


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SUPERVISORY PATENT EXAMINER